IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

THE STATE OF RAJASTHAN. V. PITHA RAM & OTHERS.

D. B. CRIMINAL APPEAL NO. 294/87

Under Section 378 (iii) & (i), Cr.P.C.,against the Judgment dated 06-11-1986, passed by Shri V.K.Jain, RHJS,Additional Sessions Judge, Bali in Sessions Case No.47/86 (4/82)

DATE OF JUDGMENT :::: 10-10-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. J.P.S.Choudhary, P.P., for the State – appellant.
Mr. Doongar Singh, for respondents.

BY THE COURT: (PER HON'BLE MR. BHANDARI, J.):-

The State has preferred this appeal to challenge the judgment dated 06.11.1986, passed by the learned Additional Sessions Judge, Bali, in Sessions Case No.47/86 (4/82).

The prosecution case was started with lodging of FIR by Moti Ram with Police Station, Sadri on 20.09.1981, at around 2.00 P.M. Moti Ram stated that his uncle's son Hira is married to Rukma, daughter of Pitha Ji. However, Pitha was not sending her daughter for the last one year. Today, at about 10.00 A.M., Hira, Dava and Dana along with the complainant went to Pithaji's well to bring Hira's wife Rukma. Pithaji was already available on the well, therefore, he was requested to allow her daughter Rukma to come with them. Pithaji stated that he can sent Rukma, only after Panchayat is arranged or organized. Therefore, he asked them to sit. After some time, Pitha, Panna Ram and Deva Ram came along with three others equipped with lathis and Dhariya. All those encircled them and, thereafter, they were assaulted by Dharia and lathis. As a consequence of assault, complainant sustained two injuries on head out of Dharia and both the injuries were caused by Devaram. Pitha Ram caused injuries on his head as well on his right hand which were arising out of lathi. Pitha and Panna Ram, thereafter, assaulted Hira by lathis who was beaten by others, mainly on head, hand and private parts of the body. Dava and Dana were also beaten by the assailants.

The accused assaulted them with the intention to kill. As a consequence of which, Hira died after some time.

The Police registered FIR, bearing No.205/81, by registering the case under Sections 147, 148, 149, 302 and 307, IPC. After conducting usual investigation, Police submitted challan. The trial Court, thereafter, framed charges against all the accused under Sections 147, 148, 302/149, 307/149, 325 and 323 of IPC. All the accused denied charges and claimed trial.

At the trial, prosecution produced seventeen witnesses and exhibited fifty-eight documents, whereas, in defence, no witness was produced, but one document was exhibited. The statements of the accused were recorded under section 313 of Cr.P.C.

The learned trial Court acquitted all the accused vide impugned order.

The learned Public Prosecutor, appearing for the State, urged that the trial Court failed to correctly appreciate the evidence produced by the prosecution and thereby, held that Rama, Kapura and Walaram did not participate in the occurrence. It was further urged by the learned Public Prosecutor that three accused, namely, Pitha, Panna and Deva had actively

participated in the occurrence, yet they were acquitted, more so, when not only presence of those accused was found proved, but the material available on record further proved their participation in the fight. Hence, the learned trial Court erroneously acquitted three accused. Lastly, it was urged that it was not a case falling under the provisions of Section 100, IPC. Thus, the accused were not entitled for the benefit of self-defence. Prayer of the learned counsel is that the judgment of the trial Court be set aside.

Per contra, learned counsel appearing for the accused, submitted that it was an occurrence which took place at Pitha's well, where deceased and his party came equipped to take Rukma with them forcefully. However, when accused and others did not permit Hira and others to take Rukma with them forcefully, it was deceased and others who assaulted the accused and two others. Thus, in that process, if any injury was caused to the deceased, as out-come of self-defence, one cannot be convicted. Supporting the judgment of the learned trial Court, learned counsel for the non-appellants urged that the judgment of the trial Court deserves to be sustained, because the accused have received injuries.

We have considered the rival submissions of the learned counsel for the parties and scanned the matter carefully.

The First Information Report was registered with recording of statement of Moti Ram as on 20.09.1981, at about 11.30 A.M. Than Singh, Police Constable, heard that some occurrence took place at Pitha's well. On visit, it was found that five persons were lying injured. Out of which, one Panna Lal was known to the Police Constable Than Singh. The said Constable, thereafter, asked about the incident, then all those injured quoted one and the same incident and thereupon, the statement of Moti Ram was recorded by the In-charge, Police Station, at about 2.50 P.M. The statement of Moti Ram has already been referred, in which he has stated about the incident. The prosecution had produced many witnesses. However, PW 9 Dava Ram, PW 12 Smt.Rukma and PW 13 Dana are the eye witnesses. Thus, their testimony is quite material to adjudicate this appeal, inasmuch as, complainant Moti Ram was not produced by the prosecution.

PW 9 Dava Ram stated that when they were sitting at Pitha's well, then Panna and Devaram came along with one person. Panna immediately started fighting with aid of a lathi. The said witness, thereafter, stated that Panna caused a blow on the neck of Hira by an axe and when they tried to release Hira, they were also beaten by lathis. Deva sustained one lathi blow on his hand and other on his head. Moti Ram was given blow by

Pitha Ram by Kulhari which caused injury on his head. But, who had beaten Dana, is not known to the witness. Moti Ram was also beaten by Pitha Ram and his daughter. The witness, however, excluded Bala Ram's presence. The said witness also pleaded ignorance about the fact as to whether the accused sustained any injury or not. In cross-examination, witness stated that axe was existing with Pitha Ram and Deva Ram, thus Panna was excluded in cross-examination and further admitted that who caused a lathi blow to him, is not known excluding Dava Ram and, thereafter, by indication, he specified Rama, having caused such blow. Perusal of the cross-examination shows that the witness was not knowing the accused and further admitted that in earlier statement, he had not specified as to who caused injury to Dana Ram and further stated that he had not specified name of Devaram, causing injuries to him. The witness further stated that he had not stated the fact that Panna was having an axe and, after improvement, stated that Panna was having an axe. The witness, thereafter, admitted that he made certain statement earlier, on the basis of hear-say statement. Thus, we find that there exists lot of contradictions in his statement, because what had been stated in examination-in -chief was not maintained in cross-examination as there exists deviation or improvement.

PW 13 Dana Ram is another material witness, who then stated that Pitha Ram called four brothers as his one brother Hira married to Rukma, daughter of accused Pitha. The witness stated that who gave him blow, is not known to him, but it is known that Davaram and Moti Ram also sustained injuries, whereas, Hira died, but who caused injuries to Hira, is not known to him. In the cross-examination, witness stated that he is not in know of the fact that which of the accuswed was holding Dharia or a lathi. Thereafter, stated that he was given lathi blow by Balia and Kapura. We find that the statement of PW 9 has not been corroborated by PW 13 Dana Ram, rather there exists contradictions in their statements which make their testimony to be untrustworthy.

PW 9 Dava Ram stated that Panna caused one lathi blow, but, thereafter, Panna was assigned an axe. The witness had further shown axe in the hand of Pitha and Deva, but, in his police statement, it was stated that Panna and Pitha had caused lathi blow to Hira, therefore, Pitha was assigned a lathi in police statement, but axe as was assigned to Pita in his Court statement. In the examination-in-Chief, Deva Ram is shown to have lathi, but, in cross-examination, said Deva Ram was assigned an axe. These are the material contradictions which cannot be ignored, not only for the reason that a witness could

not stand at is own in the cross-examination, but the story narrated by one witness was not corroborated by another, despite of their being eye witnesses. Rather, if the statement of PW 13 Dana is looked into, then he is not supporting basic story of the prosecution.

PW 12 Smt. Rukma is wife of deceased Hira. She stated that Dana Ram, Moti Ram, Dava Ram and Hira came to collect her. Her husband Hira, thereafter, pulled her "Choti" and Panna stated that tomorrow, they will settle the matter in the case fixed. However, Hira stated that he will settle the matter today itself and, thereafter, Hira and others started beating her brother. She has not supported the prosecution story, rather, according to her statement, assault was first started by the deceased and others.

On perusal of the evidence, it comes out that so far as Bala, Kapura and Rama are concerned, there exists no convincing evidence to show their presence as the prosecution could not produce evidence to corroborate their presence, apart from the fact that none of them sustained any injury, despite of a case of group fight. Now remains other three persons, namely, Pitha, Panna and Deva Ram. All the accused have admitted their presence. Pitha stated that when Hira, Dava

Ram, Moti and Dana Ram tried to take to his daughter forcefully, then to save her, fight was broken out. Accused Panna stated that when he tried to save his sister, then deceased along with Dava Ram, Moti Ram and Dana Ram assaulted them. All the three accused admitted their presence, at the scene of the occurrence. However, learned counsel for accused urged that it was nothing, but an act governed by the provisions of Section 100, IPC, as it was a case of self-defence. Referring to injury reports Exs. P-56, P-57 and P-58, it was stated that accused sustained injuries, at the instance of deceased Hira and others. In view of the above facts, question comes as to whether it was a case where right of private defence was available to the accused ? If the statements of prosecution witnesses are also seen, then it becomes clear that Rukma was married to Hira. However, Rukma was not going with Hira, thus, Dana, Hira, Dava Ram and Moti Ram went to Pitha Ram's well. Thus, it is not the accused who went to the place of deceased or the injured, but it is the deceased and injured who came at Pitharam's well to take away his daughter Rukma. In that process, Pitha Ram and Panna tried to stop Hira to take Rukma with forcefully them, accused were given blows from sharp as well as blunt weapon and, in that process, Hira, Dava and Dana Ram sustained injuries, out of which Hira died.

PW 13 Dana Ram had admitted that they had tried to take Rukma with them forcefully, assault was started and they were not permitted to take Rukma with them. It is also a fact that a case under Section 107, Cr.P.C., was pending, coupled with the fact that even accused Panna received three injuries, out of which one was arising out of a sharp weapon on a vital part. Pitha sustained one injury with swelling, whereas Deva Ram also sustained two injuries. Therefore, we find that right of private defence was available to the accused, inasmuch as, when Hira, Dava and Dana were equipped, even with sharp weapon and one of the accused sustained head injuries, then, in those circumstances, if four persons sustained injuries and out of which one died, then it cannot be said that Hira was killed with intention to cause murder. Rather, occurrence has taken place at accused's place, therefore, deceased and injuried had come with the intention to forcefully take away Pitha's daughter and, for that purpose, they were equipped with sharp weapon, coupled with the fact that those persons first tried to forcefully take away Rukma, in exchange, if assault was caused by the accused, then it falls within the purview of the self-defence as provided under Section 100, IPC.

Thus, in view of the discussions made above, we find that not only the statements of the prosecution witnesses, more

specifically eye witnesses, are not reliable, for the reason that the statements contain material contradictions and otherwise, statement of one witness is not corroborated by others. Therefore, prosecution could not prove its case beyond doubt by producing reliable and trustworthy evidence. Apart from this, it is otherwise seen to be a case falling under Section 100, IPC, inasmuch as, accused were having right of private defence and, in that process, if Hira died, then they cannot be convicted for the charges which were framed by the trial Court against them.

Considering the finding of the trial Court also, we find that there exists no perversity therein, rather trial Court examined the matter carefully, after discussing each and every aspect of the matter, hence finding recorded by the trial Court does not call for any interference. In these circumstances, we do not find any substance in the arguments of the learned Public Prosecutor.

In view of the discussions made above, the appeal preferred by the State fails and the same is accordingly dismissed. The accused need not to surrender.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J

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